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Gender Inequality in Indian Judiciary: Need for Reforms

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ABSTRACT

Due to gender discrimination, violence against women, other types of women's repression, and the patriarchal social structure, there is a low percentage of women participating in government services. Long-standing gender discrimination in government institutions prevents women from using these services and also results in the denial of justice when women complain about the violation of their legal rights to these institutions. The presence of men in government institutions deters women from asserting their legal rights by implying that they would lose their chastity, reputation, prestige, and other qualities that are dependent on their status as women. When it comes to equitable representation of women on benches, India's higher court offers a grim picture after 72 years of independence. India's public debate focuses on issues like the backlog of cases, the insufficient number of judges, and the preponderance of caste- or religion-based nominations of judges, but not on the importance of having a diverse court that represents both genders equally. Due to several societal and educational barriers, women were formerly unable to access constitutional courts; now, with equal access to education, the number of women choosing a career in law is increasing. From then, this study will explore the pervasive diversity aspect that rules India's higher judiciary according to tradition. The purpose of the paper is to investigate the presence and impact of gender diversity in the process of choosing Supreme Court justices.

Keywords: *Gender Discrimination, Judges, Barriers, Supreme Court, Prestige*

I. INTRODUCTION

India is a diversified country with a wide variety of interests, practices, and traditions, but more importantly, it is a land of differing viewpoints. When we try to stroll on the borders of gender diversity against this heterogeneous backdrop, we cannot help but note that it is mostly characterized by gender alienation rather than empowerment. The situation was not always so bleak. For instance, as Sen has argued², if we go back a few centuries, in the Brihadaranyaka Upanishad, we can read about the famous intellectual argument made by Gargi to Yajnavalkya

¹ Author is a Research Scholar at Jagannath University, NCR-Bahadurgarh, India.

² Amartya Sen, *The Argumentative Indian 7* (Penguin Books Ltd., London, U.K., 2006).

in front of great pundits, and we can also find Maitreyi asking a significant question to her husband Yajnavalkya about "the reach of wealth in the context of the problems and predicaments of humanlife, in particular what wealth can or cannot do for us." With time, this position of women has been marginalized to the point that the "human argumentative nature" has been assigned a "male gender" and has frequently been exclusively associated with men. Women have historically been given a tender and peace-loving image, which often runs in contradiction when we see women speakers playing powerful roles like those of the above and even Draupadi in Mahabharat, who starts a war.³ As a result, women who practice law frequently get criticized for being too aggressive in front of judges. Women lawyers have an occupational hurdle as a result of gender preconceptions, which alienates them from the field. The subject of how to construct an inclusive judiciary in the modern day, given the predominance of actual gender diversity⁴ in constitutional courts, becomes particularly pertinent when looking at the function of the constitutional courts in India.⁵ It has been argued by the Professor that the public's perception of judge gender plays a crucial role in securing public support for a judicial decision.⁶ Accordingly, eliminating gender stereotypes may be the first step in fostering an objective public opinion of judicial decisions. The more the judiciary reflects the makeup of the population, the more it will help to confer legitimacy on court decisions.

Since it attained independence, India has struggled with gender bias and discrimination. The picture painted by the Indian judiciary is unaltered. India's judiciary has recently considered the concept of creating an entirely reflecting judiciary, however creating a new India has been "an uphill effort proceeding at a meandering pace."⁷ According to recent studies, the higher court has a persistent gender imbalance issue, with women making up only 12% of the overall workforce. The common discussion in India is on the backlog of cases, the insufficient number of judges, and the prevalence of caste- or community-based appointments of judges, but not on the importance of having an inclusive judiciary with a balanced representation of the genders.

³ Ibid.

⁴ OHCHR has acknowledged that gender stereotyping 'is an obstacle to women's rights to meaningful progress'. It has categorically explained 'Gender stereotyping' as the practice of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the social group of women or men. UNHCR, "Gender stereotypes and Stereotyping and women's rights" (Sep. 2014), available at: www.ohchr.org/documents/issues/women/wrgs/onepagars/gender_stereotyping.pdf (last visited on Oct. 15, 2019)

⁵ In India, the Constitution has not designated any court as Constitutional Court. For the purpose of the paper, the Supreme Court of India is described as Constitutional Court as it has been bestowed with the jurisdiction to review the legislation and adjudicate the dispute between the constituent units.

⁶ M.P. Fix & G.E. Johnson, "Public Perceptions of gender bias in the decisions of female state court judges" 70 *Vanderbilt Law Review*, (2017), available at: <https://wp0.vanderbilt.edu/lawreview/2017/11/public-perceptions-of-gender-bias-in-the-decisions-of-female-state-court-judges/> (last visited on Aug. 20, 2019).

⁷ Upendra Baxi, "Women in Judiciary: From Raw Deal to New Deal?", available at: www.indialegallive.com/viewpoint/women-in-judiciary-from-raw-deal-to-new-deal-57342 (last visited on Aug. 20, 2019).

Following the concern made in *Imtiaz Ahmad v. State of Uttar Pradesh*⁸, the Law Commission report has categorically defined the many concepts of delay, backlog, arrear, and pendency that are sometimes used interchangeably. The Justice M.J. Rao Committee Report was also publicized by the Law Commission⁹ in order to encourage judges to adjudicate matters quickly. In order to determine whether additional judicial resources are needed (and where they should be focused) in order to reduce the present backlog and avoid future backlog building, the committee has looked at the current patterns of institution, disposal, and pendency.¹⁰

In general, there are two ways to choose high court judges: either through judicial service or through the bar, i.e., there are two categories of people who can be chosen as high court judges: a) judicial officers with 10 years of experience, and b) high court lawyers with 10 years of experience.¹¹

The Constitution states that the following people can be appointed as Supreme Court justices: a) high court judges with five years of experience; b) high court lawyers with ten years of experience; or c) eminent jurists¹² in the President's view.¹³ This kind of criteria doesn't say anything about the candidates who are appointed to the court in particular. To date, official constitutional requirements and informal norms have coexisted to determine the standards for appointing judges.¹⁴ The author of this article seeks to further the widely accepted claim that creating a varied judiciary in India is important from the standpoint of a diverse India. The higher judiciary makes policy decisions and establishes systems for effective governance in addition to serving as the last arbiter of disputes.¹⁵ Therefore, in the interests of the greater good, it should reflect the variety that the nation's geography and demographics project. A varied court not only emphasizes the equally represented nature of the legal system, but it can also result in innovative solutions to issues by leveraging a variety of human resources.

(A) Objectives of the Study

The primary objective of this paper is to:

⁸ AIR 2012 SC 642.

⁹ Justice M.J. Rao Committee, Vol 2, "Report on Judicial Impact Assessment In India" (2008) available at: http://doj.gov.in/sites/default/files/judicialimpactassessmentreportvol1%20%201_0.pdf (last visited on Aug. 29, 2019).

¹⁰ *Ibid.*

¹¹ The Constitution of India, art. 217(2).

¹² The only distinguished jurist to have ever come close to being appointed was Nagendra Singh as a Supreme Court Judge.

¹³ The Constitution of India, art. 124(3).

¹⁴ Abhinav Chandrachud, *The Informal Constitution: Unwritten criteria in selecting judges for the Supreme Court of India* (Oxford University Press, New Delhi, 2014).

¹⁵ Arghya Sengupta, *Independence and Accountability of Indian Higher Judiciary 1* (Cambridge University Press, Cambridge, U.K., 2019).

1. To examine and analyze the role of Gender Inequality In Indian Judiciary.
2. Focus upon Constitutional safeguards, and legislative acts, government schemes, in relation to Gender Inequality In Indian Judiciary.

(B) Research Methodology

This work was prepared using a methodology based on qualitative explanation. For the purpose of gathering data and information, secondary resources including books, magazines, newspapers, research papers, digital resources, archives, etc. are used.

II. DISCUSSION

GENDER PREJUDICE IN JUDICIARYWOMEN JUDGES

There is sexism directed towards female judges as well. Male lawyers who lost cases have been known to insult them. When a lawyer harassed a female judge at the Karkardooma courts in Delhi, the judge lodged a FIR. However, according to reports, her own chief court magistrate requested that she drop the lawsuit. Women are rarely appointed in the judiciary. Out of the 229 judges appointed since 1950, only six women have been appointed to the Supreme Court after independence. Only 62 of the 611 high court judges at the federal level are women. Fathima Beevi, a judge from Kerala, was the first woman to be appointed to the Supreme Court in 1987. A woman wasn't named as a Supreme Court justice for more than 40 years after independence. According to Dhananjay Mahapatra of Times of India.com In India, just 98556 of the 955013 attorneys registered with the Bar Councils are women. About 10% of female law graduates are employed as advocates at the federal level.

It is a man's world, according to statistics. Justice R. Banumathi is the sole female judge on the Supreme Court, whereas there are 25 male judges. There have only been six women appointed as judges to the Supreme Court thus far. Only 64 female judges make up the 24 High Courts in the nation, compared to 557 male judges, and eight High Courts have no female judges at all. Only two of the at least 44 names that the Allahabad High Court collegiums recently recommended to the government for the appointment of judges are women. Only in 1959 was a woman appointed to the High Court. There have never been more than two women serving as Supreme Court justices.

A. ADVOCATING FOR DIVERSE JUDICIARY

The Indian Constitution does not expressly forbid the preservation of diversity, but it has been noted that only a few facets of diversity, such as religious minorities, caste backwardness, and regional representation, have been taken into account when appointing judges to the higher

judiciary.¹⁶ An inclusive judiciary is a concept ingrained in the Constitution itself.¹⁷ It is vital that this idea be reflected in all constitutional offices. Although the Indian Constitution does not include a formal standard (affirmative action policy) for maintaining gender diversity in the selection of judges, there are unofficial standards in place for the appointment of Supreme Court judges.¹⁸ An informal "women quota"¹⁹ or "an informal quota system"²⁰ are frequently used when appointing female judges to the Supreme Court. These procedures are "black holes" in the higher judiciary's selection "space" because no one is informed of the selection criteria or parameters. A tradition that high courts should have at least one female judge has also been mentioned.²¹ Sujata Manohar, Ruma Pal, Gyan Sudha Mishra, Ranjana Desai, R. Bhanumathi, Indu Malhotra, and Indira Bannerjee, JJ. were all appointed after Fatima Beevi, J. in 1989; they were then followed by appointments in 1994, 2000, 2010, 2011, 2014, 2018, and 2018, respectively. A detailed examination of their chosen judgements may reveal crucial constitutional adjudications involving questions of law or Constitutional interpretation. Selected rulings are used in this article's purpose to support the claim that the bench is inclusive.

B. JUSTICE SUJATA MANOHAR

In *Government of Andhra Pradesh v. P B Vijay Kumar*²², R.M. Sahai and S.V. Manohar, JJ. were part of the bench who had to deliberate upon the fact that whether preference given to women in matters of direct recruitment would violate constitution. The Government of Andhra Pradesh introduced Rule 22-A(1) in the Andhra Pradesh State and Subordinate Service Rules, 1996, under the proviso to Article 309 of the Constitution of India, in response to the fact that women were not receiving their fair share in public employment. This rule states that in the matter of direct recruitment to posts for which women are better suited than men, preference shall be given to women, but not to the complete exclusion of men. It was contested as being unlawful since it violated articles 14, 16(2), and 16(4) and had a significant negative impact on all men who were unemployed in the State of Andhra Pradesh. Following a thorough examination and interpretation of Articles 14, 15, and 16, the Court confirmed the constitutionality of the contested rule. The court adopted reasoning similar to that in *Shamsher Singh v. State of Punjab* along with brief narration of the origin of article 15(3) in the Indian

¹⁶ Abhinav Chandrachud, *The Informal Constitution: Unwritten criteria in selecting judges for the Supreme Court of India* (Oxford University Press, New Delhi, 2014).

¹⁷ Indian Constitution has promoted the concept of inclusivity for the genders through Preamble, Fundamental Rights and Directive Principles of State Policy.

¹⁸ *Supra* note 33.

¹⁹ *Supra* note 48 at 218.

²⁰ *Ibid.*

²¹ *Supra* note 33.

²² AIR 1995 SC 1648.

Constitution.²³ Article 15(3) permits both affirmative action and reservations in relation to employment or jobs held by the State. The creation of an egalitarian society is the aim of both articles 15 and 16. The court acknowledged that one of the key components of article 15(3) of the Indian Constitution is ensuring that women have access to employment opportunities. Therefore, the court rejected the argument made that article 16 may be used to limit women's employment opportunities under article 15. (3). The court went beyond article 15(3) and drew parallels from the clause in article 16(4), arguing that if positive affirmative action is allowed for uplifting any backwardness, then why can't the same be done for women under the provisions of article 15(3) given the amount of backwardness the gender has endured for ages.

C. JUSTICE GYAN SUDHA MISHRA

Justices Harjit Singh Bedi and Gyan Sudha Misra delivered a brave judgment in *Pyla Mutvalamma @ Satyavathi v. Pyla Suri Demudu*.²⁴ According to Section 125 of the Code of Criminal Procedure, women who have been on the wrong side of the bigamy statute are no longer entitled to support. This practice has persisted. The flaw in this established procedure was that it neglected to consider the condition of those women who had no voice in the bigamy. Men broke the rules of monogamy, but it was women who were deprived of their essential requirements for upkeep. As it is well established that the revisional court can only intervene if there is any illegality in the order, there is any material irregularity in the procedure, or there is an error of jurisdiction, the court sternly reiterated that the high court should not have reviewed the findings made by the magistrate while exercising its revisional jurisdiction. She cautioned that the revisional court lacks the authority to reevaluate the evidence and substitute its own conclusions in a revision against the maintenance order issued in proceedings under section 125 of the CrPC. The Court further emphasized the function of a civil court in divorce disputes and spoke at length on its conclusiveness. The high court improperly used its jurisdiction when it heard the revision petition challenging an order granting support to the appellant-wife under section 125 of the Criminal Procedure Code, the Supreme Court sharply ruled.

²³ AIR 1995 SC 1648. (Para 11: ...The preference contemplated under Rule 22-A(2) will come into operation at the initial stage when in the selection test for the post in question, candidates obtain the same number of marks or are found to be equally meritorious. Rule 22-A(2) prescribes a minimum preference of 30% for women, clearly contemplating that for the remaining posts also, if women candidates are available and can be selected on the basis of other criteria of selection among equals which are applied to the remaining candidates, they can also be selected. The 30% rule is also not inflexible. In a situation where sufficient number of women are not available, preference that may be given to them could be less than 30%.).

²⁴ (2011) 12 SCC 189.

D. JUSTICE R. BHANUMATI

In *Mukesh v. State for NCT of Delhi*²⁵, Bhanumati J., observed in her separate concurring judgment that mere stringent legislations cannot contain the situation; gender sensitization at the early stages of the formative years of a child should be made mandatory. More than a physical crime, rape is an exertion of power and demeaning of the entire personality of the woman as observed in *Gurmit Singh*.²⁶ Therefore, it is crucial to teach children from an early age to respect others, regardless of their gender. Her assessment on how to alter society's collective thinking is consistent with the wider psychological perspective of society. 64 Her findings gave the court's role in handling delicate situations involving crimes like rape a new perspective.

E. JUSTICE INDU MALHOTRA

In *Indian Young Lawyers' Association v. The State of Kerala*,²⁷ popularly known as the Sabarimala Temple Entry Case, the Court observed that the right to gender equality to offer worship to Lord Ayyappa is protected by permitting women of all ages, to visit temples where he has not manifested himself in the form of a 'Naishtik Brahamachari', and there is no similar restrictions in those temples. The dissent in this ruling, which also comes from the only female judge on the bench, is noteworthy. The legal community not only praised Justice Indu Malhotra's minority opinion on legal matters, but also commended her for having the courage to deviate from the consensus. The path taken by Justice Indu Malhotra to the Supreme Court is unique. She was the first experienced female counsel to be immediately appointed as a Supreme Court judge. She was the second female attorney to be chosen by the Supreme Court as a senior advocate, the first being Leila Seth.

III. THE WAY FORWARD

The chosen rulings are representative in character to demonstrate how the perspective or the presence of women on the bench has expanded the scope or increased the acceptance of a legal theory or interpretation. The judicial rulings have provided a new perspective on the gender question. If a male judge wrote the decision, it can be assumed that interactions among the other judges, including a female judge, led to the acceptance of a protectionist or sameness approach to the question of gender equality.

In addition to being the highest court for resolving disputes, India's Supreme Court is crucial in

²⁵ (2017) 3 SCC 719.

²⁶ *State of Punjab v. Gurmit Singh* (1996) 2 SCC 384.

²⁷ 2018 (8) SCJ 609.

determining the direction of the country's public policy.²⁸

There has always been skepticism about the legality of the judiciary's engagement whenever the court has dealt with matters of policy or those having wider societal implications. On the grounds that it lacks the authority to make policy decisions or the popular backing of the populace, both of which are necessary to enact social transformation, aspersions have been leveled against it. In certain cases, the court should either abdicate its authority or appoint a delegate to handle the objections.

The Supreme Court has always handled matters of national significance with integrity while being aware of the boundaries of its jurisdiction²⁹.

It has expanded the boundaries of the separation of powers on several occasions. The Supreme Court cannot, however, split its hairs on whether to rule on an issue where there is no legislation or where the present legislation is insufficient. If there is a disagreement about a policy, it must resolve it and ensure that the proper branch of government is tasked with handling it. Because it is an institution essential to the country's governance as well as a forum for resolving disputes, the higher judiciary must be more gender diverse.³⁰ The Supreme Court's judges' diversity contributes to the legitimacy of the institution.³¹ Any decision-making body must have legitimacy; hence it may be argued that the Supreme Court of India currently needs a diverse court that offers women real, substantive representation rather than just symbolic representation. The higher judiciary has not yet adopted a paradigm that prioritizes gender as a qualification for appointment. It is also important to assess what kind of gender diversity the Indian judiciary needs, where the interventions should be made, and whether or not we should also take into account gender diversity across sectors. What impact will inter-sectoral gender diversity have on the standard of law education provided under the Indian model, if at all? What sort of representation do we want? What kind of strategy is required to accomplish this gender diversity? These are all issues that require careful consideration. Understanding the function of judges and how differences in values reflect differences in judging may help to clarify the necessity of a varied judiciary. The current problem presents a wide range of concerns, which provides a good foundation for further investigation.

²⁸ *Aruna Ramachandra Shanbaug v. Union of India*, [2011] 2 SCR 869.

²⁹ *Supra* note 37.

³⁰ Arghya Sengupta, *Independence and Accountability of Indian Higher Judiciary 1* (Cambridge University Press, Cambridge, U.K., 2019).

³¹ Abhinav Chandrachud, *The Informal Constitution: Unwritten criteria in selecting judges for the Supreme Court of India* 274 (Oxford University Press, New Delhi, 2014).

IV. CONCLUSION

Women who are impacted by men are denied justice when men dominate government institutions. Men working in government entities deter women from visiting offices to assert their numerous legal rights. Particularly when crimes like rape, sexual harassment, eve-teasing, and other related rights harm women. Rule of law emphasizes that because male officers predominately hold top positions in governmental organizations, they cannot deal with women's issues objectively. They mostly use threats of loss of virginity, reputation, prestige, and other things depending on the position of the females to dissuade women from giving up their rights or tolerating the actions of abusers. Masculinity seeks to protect male offenders who have committed crimes because they lack money benefits and suppresses the feminine gender in whatever way it can, setting a terrible example that prevents all types of women's laws from being implemented.

Even though India has implemented numerous legislative safeguards and welfare programs aimed at elevating women's position and integrating them into the development process, traditional, cultural, social, economic, educational, and political issues have prevented us from getting the desired results. Women should prioritize news and public awareness in the media. Women are victims of identical issues, and males often use similar strategies to trick girls, such as finding love through false promises, trafficking women by offering them bogus work opportunities, and other cheating techniques that can be learned from the media. Women should receive sex education and self-defense instruction in the ever-evolving modern society. Women can access and uphold their rights with the aid of organized functions like Women Self Help Groups, Women Clubs, Associations, branches of Women Commissions, and other types of group activities. Today, organizations representing both men and women speak out against crimes committed against women, which has resulted in significant policy and legal improvements in our nation.

In order to give women confidence in the legal system, the formal social control system needs to be strengthened and expanded. The Child Help Line, the Help Line for Distressed Women, the Employer's Action against Sexual Harassment at Work, and the Reservation Election for Women are all good, working measures. The regulation of commercial sex work is necessary due to modern mechanical life, dietary habits, hormonal changes in adolescents brought on by internet exposure, an increase in divorce cases, and other necessities of the globalized technological period. Through joint family living arrangements, informal social control systems such as folkways, mores, norms, values, customs, and other techniques that emphasize respect for

equality, freedom, and respect for women would be given prominence. The pace of growth will quicken if the barriers are removed and women engage in worthwhile endeavors. Men have a responsibility to end discrimination against women and protect their freedom in order to create an egalitarian society in their families, communities, places of employment, and government.
